

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	
SPRING VALLEY HOMEOWNERS' ASSOCIATION	DECLARATORY ORDER
WATER SERVICE EXCISE TAX	DOCKET NO. 2021-300-2-0063

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by Spring Valley Homeowners' Association ("Spring Valley HOA" or "Petitioner") on February 16, 2021, and in accordance with Iowa Code section 17A.9 (2021) and Iowa Administrative Code rule 701—7.24(17A) (2021), the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition and further communications with the Petitioner. Spring Valley HOA consists of 58 single-family households that are all located in the Spring Valley housing development in Iowa City, Johnson County, Iowa. Spring Valley HOA owns its own water system and provides water service to all homeowners in the development. Spring Valley HOA is responsible for the maintenance, operation, and improvement of the water systems serving the development.

Spring Valley HOA is also responsible for the assessment and collection of sufficient funds from the homeowners for actions taken by Spring Valley HOA for the benefit of the owners. The homeowners' annual HOA dues to Spring Valley HOA "cover, among other things, road maintenance, snow removal, lawn care, maintenance of common areas, and water service." Pet. For Declaratory Order at 2, No. 2021-300-2-0063 (Feb. 16, 2021). According to Article V in the Spring Valley HOA's By-laws, "[e]ach member shall...pay a prorata share of the costs of maintenance, repair, operation and improvement for water system, roadways and

common areas within Spring Valley Subdivision as well as prorata share of the costs of any other services contracted through the Association." Homes in Spring Valley HOA are not separately metered and homeowners are not billed an itemized fee for water.

Instead, Spring Valley HOA charges each homeowner a flat annual fee to cover all expenses of the development. Each year, Spring Valley HOA provides financial reports to the homeowners which itemize each homeowner's fees by listing the specific fund pool their fees will go to, including road fund, pond fund, special assessment, well fund, and other fees. The money in the well fund is used for Spring Valley HOA's repairs and maintenance of its well system as well as for emergency planning in the event of a failure of a well. The financial report also provides a detailed breakdown of the well expenses: chlorination, licenses and fees, maintenance, and testing and monitoring. Prior to 2018, while Spring Valley HOA collected the annual fee from its homeowners, it did not collect or remit states sales tax for its water service. In 2018, Spring Valley HOA began remitting water service excise tax ("WET") after the Iowa legislature enacted the tax.

II. ISSUE PRESENTED

The Petition presents one issue for consideration: Whether Spring Valley HOA meets the definition of a water utility providing water service for compensation and is therefore required to collect and remit WET.

III. STANDARD OF REVIEW

A. Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide a "generally available means for persons to obtain reliable information about agency administered law as it applies to their particular circumstances." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 647 (2013) (quoting Arthur Earl Bonfield, Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government, 1-8 (1998)).

Declaratory orders are not contested cases that “entitle[] parties affected by the agency action to an adversarial hearing” in order to “adjudicate disputed facts pertaining to particular individuals in specific circumstances.” *Greenwood Manor v. Iowa Dep’t of Pub. Health, State Health Facilities Council*, 641 N.W.2d 823, 834 (Iowa 2002); Iowa Code § 17A.12.

Iowa’s Administrative Procedure Act (“IAPA”) was enacted “to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public.” Iowa Code § 17A.1(2). Under IAPA, “[a]ny person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.” *Id.* at § 17A.9(1)(a). IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* at § 17A.9(8). IAPA “contemplates declaratory rulings by administrative agencies on purely hypothetical sets of facts.” *City of Des Moines v. Pub. Emp’t Relations Bd.*, 275 N.W.2d 753, 758 (1979). As such, “[t]he procedure established by section 17A.9 allows persons to seek formal opinions on the effect of future transactions and arrange their affairs accordingly.” *Bennett v. Iowa Dep’t of Nat. Res.*, 573 N.W.2d 25, 26 (Iowa 1997). Declaratory orders issued by an administrative agency do, however, have “the same status and binding effect as any final order issued in a contested case proceeding.” Iowa Code § 17A.9(7).

Pursuant to Iowa Code section 17A.9(2), the Department adopted Iowa Administrative Code rule 701—7.24, which outlines department-specific rules governing declaratory orders. The Department’s rules governing declaratory orders are consistent with this understanding of the role of declaratory orders in administrative procedure. See Iowa Admin. Code r. 701—7.24.

B. Statutory Construction and Interpretation of Tax Statutes

“When engaging in statutory interpretation,” the Department “first examine[s] the language of the statute and determine[s] whether it is ambiguous.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*,

794 N.W.2d 561, 564 (Iowa 2011)). “Generally, we presume words used in a statute have their ordinary and commonly understood meaning.” *Id.* (quoting *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010)). “Legislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute’s language is clear, we look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion of statutory terms” *Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) (internal citations omitted)).

“Special additional principles [of statutory construction] apply in tax cases.” *Iowa Auto Dealers Ass’n v. Iowa Dep’t of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). In addition to applying the general principles of statutory construction, “[s]tatutes which impose taxes are construed liberally in favor of the taxpayer and strictly against the taxing body. It must appear from the language of a statute that the tax assessed against the taxpayer was clearly intended.” *Id.*

IV. DISCUSSION

Iowa law imposes an excise tax (WET) of six percent “on the sales price from the sale or furnishing by a water utility of a water service in the state to consumers or users.” Iowa Code § 423G.3; see also Iowa Admin. Code r. 701—97.2(423G).¹ Water service is defined as “the delivery of water by piped distribution.” Iowa Code § 423.3(103)(b)(1). In the present matter, Spring Valley HOA’s position is that it does not meet the definition of a water utility therefore it is not required to collect and remit WET.

A water utility is defined as “a public utility . . . that furnishes water by piped distribution system to the public for compensation.” *Id.* § 423.3(103)(b)(2). A “public utility” includes “any person, partnership, business association, or corporation, including municipally owned

¹ While Iowa Code section 423G.4 imposes an excise tax on the sales price of the sale or furnishing of water service, Iowa Code section 423.3(103)(a) exempts this from the imposition of *sales* tax.

corporations, domestic or foreign, who owns or operates any facilities for . . . furnishing water . . . for compensation." *Id.* § 476.1(3).

Pursuant to Iowa Administrative Code rule 701—97.4(1), WET "applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if the water service and accompanying services are billed separately." Examples of sales of services to customers or users that are considered integral to the furnishing of water by piped distribution include, but are not limited to, the following:

- a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4)"a"(2).
- b. The sales price of water sold, regardless of whether the water is metered.
- c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.
- d. Fees for connection, disconnection, or reconnection to or from a water utility's facilities, including tap fees.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.
- f. Fees for using or checking water meters.
- g. Water distribution system infrastructure and improvement fees.

Iowa Admin. Code r. 701—97.4(2).

Water service is furnished for compensation when water service is 1) "sold for a separately itemized price," or 2) "when the price of the water service is identifiable from an invoice, bill, catalog, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale." Iowa Admin. Code r. 701—97.5(1); Iowa Admin. Code r. 701—97.5(2). Water service is not furnished for compensation when the provision of water service is "not sold for a separately itemized or identifiable price and is incidental to the rental of real property." Iowa Admin. Code r. 701—97.5(3).

In the present matter, Spring Valley HOA does not dispute that it provides water service and that the annual dues paid by the homeowners covers this service. Instead, it contends it

does not meet the definition of a water utility because the water service is not separately metered for each homeowner and homeowners are not separately billed for this service. Further, it argues that water service is incidental to the annual dues paid by each homeowner in the development.

Based on the information provided, Spring Valley HOA is a business association that owns and operates a water system which furnishes water to its homeowners by piped distribution. Each homeowner pays an annual fee to Spring Valley HOA and the furnished water service is included within that fee. Further, the fee for the water service is specifically itemized on the detailed financial reports provided annually to each homeowner about their paid dues. It is immaterial whether the furnishing of water service is incidental to the rental of real property to reach a conclusion as to whether water service is being furnished for compensation in the present matter. Accordingly, because the fee for water service is identifiable from the annual financial report, the Director finds that Spring Valley HOA is furnishing water service for compensation. Consequently, because Spring Valley HOA is furnishing water for compensation, it qualifies as a water utility under Iowa Code section 423.3(103)(b)(2).

Additionally, in the information provided, Spring Valley HOA charges for maintenance, inspection, and repairs of the water distribution materials and water distribution system infrastructure and improvement fees. These accompanying services are integral to providing water to the development's home owners. *See id.* at r. 701—97.4(2)"e". Therefore, because the Director finds that Spring Valley HOA is a water utility, WET applies to both the sale of water as well as the relevant accompanying services under Iowa Administrative Code rule 701—97.4(1).

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that because Spring Valley HOA meets the definition of a water utility under Iowa Code section 423.3(103)(b)(2), it is required to collect and remit WET

to the Department pursuant to Iowa Code section 423G.3 and Iowa Administrative Code 701—
Chapter 97.

Issued at Des Moines, Iowa this 14 day of July, 2021.

IOWA DEPARTMENT OF REVENUE

By _____
Craig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 14th day of July, 2011, I caused a true and correct copy of the Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person(s):

Kathryn Maxwell
Spring Valley Homeowners' Association
61 Spring Valley DR NE
Iowa City, Iowa 52240


Hollie Welch
Executive Secretary
Iowa Department of Revenue